

1984 S.C. Op. Atty. Gen. 192 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-77, 1984 WL 159884

Office of the Attorney General

State of South Carolina

Opinion No. 84-77

July 11, 1984

*1 W. E. Jenkinson, III, Esquire
Jenkinson & Jenkinson
120 West Main Street
Kingstree, South Carolina 29556

Dear Mr. Jenkinson:

You have requested an opinion from this Office regarding the applicability of [Section 17-7-650, Code of Laws of South Carolina](#), 1976, as amended. You advise that the Williamsburg County Coroner, pursuant to [Section 17-7-70, Code of Laws of South Carolina](#), 1976, as amended, and [Section 17-7-100, Code of Laws of South Carolina](#), 1976, as amended, had a jury summoned for the purpose of conducting an inquest. You state that after hearing all relevant evidence, the jury returned a verdict of death by mischance of another, pursuant to [Section 17-7-290, Code of Laws of South Carolina](#), 1976, as amended. You asked whether [Section 17-7-650](#) is mandatory or discretionary. Specifically, you inquire whether the coroner, in all cases where the jury finds death by mischance of another, must bind over that individual to General Sessions Court.

It is the opinion of this Office that a coroner is not mandated in every case to bind over that individual after a verdict of death by mischance of another. The coroner, in our opinion, is vested with discretion in deciding whether to bind over after this verdict is returned. Our opinion is based on the following three factors:

1. A coroner, in investigating cause of death and conducting an inquest, is acting as a judicial officer;
2. The long-standing custom, usage and practice of coroners in South Carolina to treat this statute as discretionary, not mandatory;
3. A textual analysis of the statute.

Each of these factors supports our conclusion that the coroner has discretion under [Section 17-7-650](#).

A coroner's powers may be judicial or ministerial, depending on the particular functions involved. Giles v. Brown, 1 Mill's Const. 230 (1817). Giles, supra, makes plain, however, that when a coroner is inquiring into the cause of death or conducting an inquest, he is engaged in a judicial function and must be considered a judicial officer. You advise that the Williamsburg County Coroner had commenced an inquest and had received the jury's verdict. Clearly, under Giles, supra, he was acting as a judicial officer. As such, the coroner is vested with reasonable discretion in choosing between two possible courses of action. 48A C.J.S., Judges, Section 61 at 643. A judicial officer has the discretion to decide what is fair and equitable under the circumstances of a particular case, [State ex rel. Thrasher v. Hayes](#), 378 N.E.2d 924, 930 (Indiana 1978), and to exercise independent judgment in making a sound and just determination. 27 C.J.S., 'Discretion,' at 289. The coroner, as a judicial officer, has the authority to exercise discretion in deciding whether it is appropriate, in any given case, for an individual to be bound over to General Sessions Court after a verdict of mischance. Thus, the fact that the coroner is acting as a judicial officer supports the conclusion that he has discretion under [Section 17-7-650](#).

*2 This conclusion is also supported by a well-recognized rule of statutory construction: the significance of longstanding custom, usage and practice in construing a statute. As Sutherland notes, 'it is only through custom, usage and convention

that language acquires established meanings.’ 2A Sutherland Statutory Construction, Section 45.02. Indeed, courts have long recognized the importance of custom and usage in reviewing statutes. For example, in Esso Standard Oil Co. v. Crescent River Port Pilots Assn., 235 La. 937, 106 So.2d 316 (1958), the court was called upon to interpret certain language involving navigable streams. In analyzing the pertinent statute, the court looked at the long-standing construction of the parties involved, i.e., the river pilots. The court noted that ‘custom which has existed over a long period of time takes on the force of law.’ Esso, supra, 106 So.2d at 327.

This Office has been advised that coroners have long viewed this statute as discretionary, not mandatory. When a coroner's jury finds death by mischance of another, it is apparently the custom and practice in this State for a coroner to use his discretion, based on all relevant and available facts, in deciding whether this individual needs to be bound over to General Sessions Court. This custom, based on longstanding practice, ‘takes on the force of law.’ Esso, supra, 106 So.2d at 327. The Court will give weight to the contemporaneous construction of a statute. Morrison v. Barksdale, Harp. 101 (1824).

Finally, a textual interpretation reaches the same conclusion. It may be argued that language of the statute is mandatory: ‘. . . the coroner shall bind him in recognizance . . .’ The word ‘shall,’ however, may be and frequently is held merely directory, not mandatory. State v. Blair, 275 S.C. 529, 273 S.E.2d 536, app. dec'd., 276 S.C. 644, 282 S.E.2d 596 (1981). Interpreting ‘shall’ as mandatory, and requiring a coroner in all cases to bind over to General Sessions Court a person found blameless, is contrary to the long-standing practice of coroners; such a contradictory result ought not be presumed. See Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E.2d 682, 684 (1950). This is particularly true here, where the coroner is acting as a judicial officer and, ipso facto, is vested with discretion in carrying out his judicial functions.

Therefore, it is the opinion of this Office that Section 17-7-650 is discretionary, and the coroner may exercise his independent, professional judgment in deciding whether to bind over an individual to General Sessions Court after a coroner's jury has returned a verdict of mischance at the hands of another.

Yours truly,

Stephen S. Seeling
Assistant Attorney General

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